



---

# Instruction Guide

---

**Subject:** Guide for Incorporating Banks and Federally Regulated Trust and Loan Companies

**Category:** Application Guides

**Date:** October 2001  
August 2004 (Revised)

## Introduction

The Office of the Superintendent of Financial Institutions (OSFI) is responsible for administering a number of federal statutes, including the *Bank Act* and the *Trust and Loan Companies Act*, the statutes applicable to the regulation of banks and federal trust and loan companies. As part of the regulatory process, OSFI assesses applications for incorporation and makes recommendations to the Minister of Finance (the Minister) who has the ultimate responsibility for approving the incorporation of financial institutions under the legislation.

This Instruction Guide sets out prudential requirements designed to help ensure safety and soundness, and legislative requirements.

The Guide identifies:

- the criteria that an applicant (typically a corporation or one or more individuals) must meet to incorporate and commence operating a bank, or a federal trust or loan company (collectively referred to as a federally regulated financial institution (FRFI) in the remainder of this Guide);
- the information that must be submitted in support of an application to incorporate and operate a FRFI; and
- the procedures to be followed in making an application.

OSFI will evaluate a proposed incorporation against the criteria in this Guide. OSFI officers from the Legislation and Approvals Division and the Supervision Sector are jointly assigned to each application for the incorporation of a FRFI.

The objective of this Guide is to promote awareness and enhance transparency of the assessment criteria for the incorporation of a FRFI. The Guide includes the requirements of all sectors of OSFI to ensure that the applicant is aware of prudential and regulatory criteria.

This Guide does not apply to the establishment of a foreign bank branch in Canada<sup>1</sup>, the incorporation of a bank holding company, or registration of a co-operative credit association. Applicants are encouraged to contact OSFI for further information regarding the establishment, incorporation or registration of these entities.

### **Additional Requirements**

Applicants should note that FRFIs that intend to take deposits<sup>2</sup> will be required to be members of the [Canada Deposit Insurance Corporation](#) (CDIC). However, if the FRFI is a bank that will only be taking wholesale deposits (deposits greater than \$150,000), it may apply to CDIC for authorization to accept deposits in Canada without being a CDIC member (referred to as opting-out of CDIC). Opting-out of CDIC is not available to trust and loan companies.

All applicants are encouraged to approach the CDIC at an early date in the incorporation process to ascertain its requirements. Since some of the information requirements of OSFI and CDIC are similar, information that is provided to OSFI (that is also required as part of the deposit insurance application) may be provided to CDIC by appending a copy to the CDIC application.

Applicants may also require membership in the [Canadian Payments Association](#) (CPA). Banks are automatically members of the CPA. Once incorporated, banks must register with the CPA. Trust and loan companies that accept transferable deposits can apply for membership. CPA membership is necessary in order to obtain an institution number for processing cheques and electronic payment transactions.

Likewise, trust and loan companies should approach provincial regulators to determine licensing and filing requirements in each of the provinces and/or territories in which they wish to transact business.

---

<sup>1</sup> Refer to the [Guide to Foreign Bank Branching](#).

<sup>2</sup> Note that subordinated indebtedness, as defined under the *Bank Act* and the *Trust and Loan Companies Act*, issued by a FRFI, is not a deposit.

---

## Table of Contents

|   | Page      |
|---|-----------|
| Overview .....  | 5         |
| <b>PART I</b>   |           |
| <b>1.0 Statutory Criteria for Issuance of Letters Patent of Incorporation by the Minister .....</b> | <b>6</b>  |
| <b>2.0 Assessment Criteria .....</b>  | <b>7</b>  |
| 2.1 Ownership .....   | 7         |
| 2.2 Eligible Applicants.....  | 9         |
| 2.3 Supervision and Regulation of Banks .....   | 9         |
| 2.4 Factors for Assessing Supervisability of a Bank .....   | 10        |
| 2.5 Supervision and Regulation of Trust and Loan Companies.....                                     | 11        |
| <b>3.0 Information Requirements.....</b>  | <b>11</b> |
| 3.1 Ownership and Financial Strength.....   | 12        |
| 3.2 Business Plan .....   | 13        |
| 3.3 Management.....   | 15        |
| 3.4 Policies, Procedures and Controls.....  | 15        |
| 3.5 Board of Directors and Committees .....   | 16        |
| 3.6 Internal Audit .....  | 17        |
| 3.7 Compliance Management .....   | 17        |
| 3.8 Information Technology Governance Structure .....   | 18        |
| 3.9 Systems and Business Continuity .....   | 18        |
| 3.10 Other Requirements .....   | 18        |
| <b>4.0 OSFI Review Process.....</b>   | <b>19</b> |
| <b>5.0 Formal Application.....</b>  | <b>19</b> |
| 5.1 Statutory Publication.....  | 19        |
| 5.2 Submission of Formal Application .....  | 19        |
| 5.3 Letters Patent .....  | 20        |

**PART II**

**6.0 Requirements for the Making of an Order by the Superintendent to Commence and Carry on Business.....20**

6.1 Requirements .....20

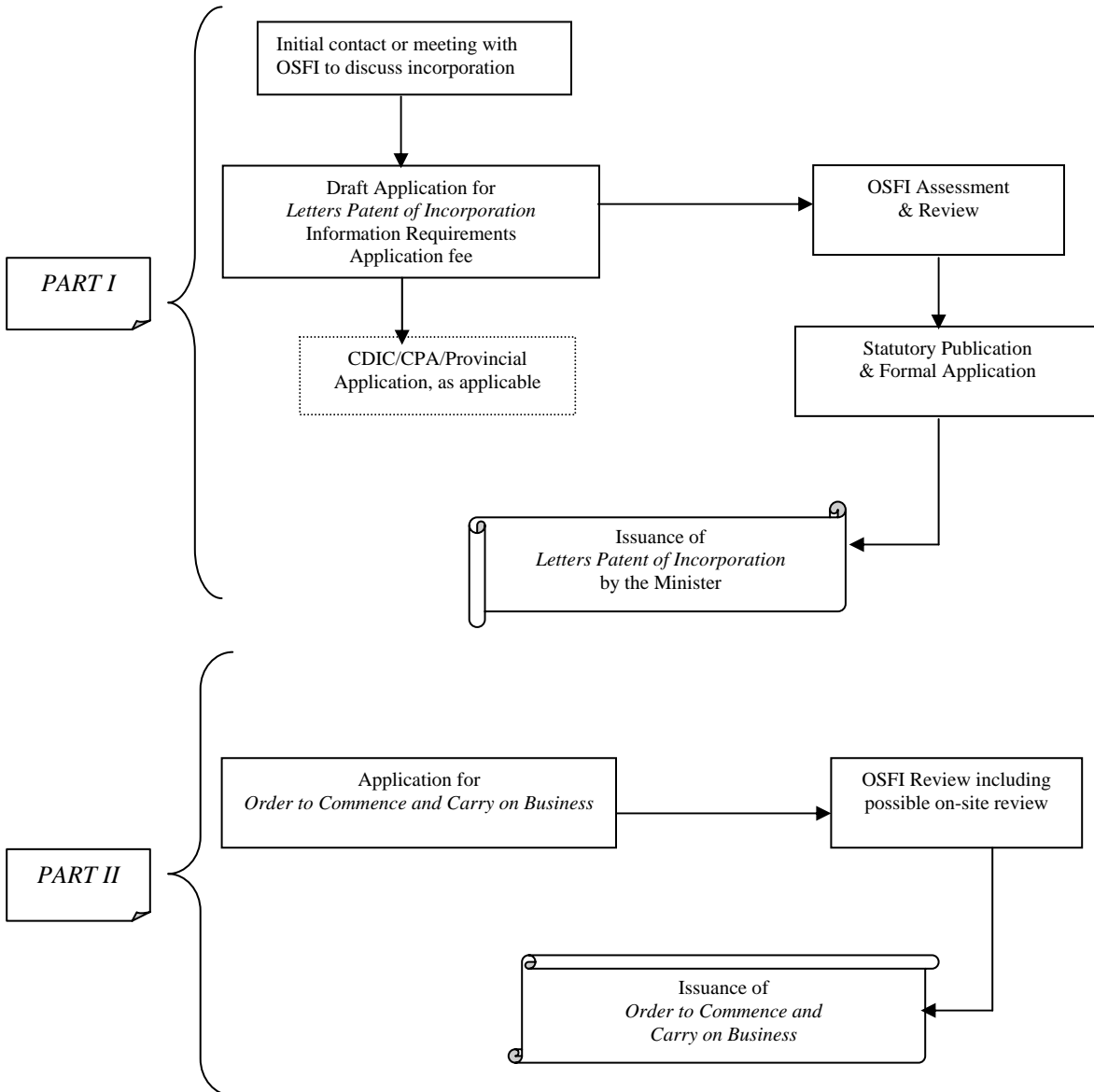
6.2 Order to Commence and Carry on Business.....21

**7.0 Timing .....22**

**For Additional Information .....22**

**Overview**

From OSFI’s perspective, there are two parts to the application process for establishing a FRFI in Canada. The first part deals with requirements to obtain letters patent of incorporation, which are issued by the Minister upon recommendation of the Superintendent of Financial Institutions (the Superintendent). The second part sets out the requirements to obtain an Order to Commence and Carry on Business. This Order is issued by the Superintendent after letters patent of incorporation have been issued. The following flowchart depicts the main steps leading to the establishment of a FRFI.



## PART I

### 1.0 Statutory Criteria for Issuance of Letters Patent of Incorporation by the Minister

Section 27 of the *Bank Act* and section 26 of the *Trust and Loan Companies Act* state that the Minister shall take into account all matters that are considered relevant to the application, including:

- (a) the nature and sufficiency of the financial resources of the applicant or applicants as a source of continuing financial support for the FRFI;
- (b) the soundness and feasibility of the plans of the applicant or applicants for the future conduct and development of the business of the FRFI;
- (c) the business record and experience of the applicant or applicants;
- (d) the character and integrity of the applicant or applicants or, if the applicant or any of the applicants is a body corporate, its reputation for being operated in a manner that is consistent with the standards of good character and integrity;
- (e) whether the FRFI will be operated responsibly by persons with the competence and experience suitable for involvement in the operation of a financial institution;
- (f) the impact of any integration of the businesses and operations of the applicant or applicants with those of the FRFI on the conduct of those businesses and operations;
- (g)<sup>3</sup> the opinion of the Superintendent regarding the extent to which the proposed corporate structure of the applicant or applicants and their affiliates may affect the supervision and regulation of the bank, having regard to:
  - (i) the nature and extent of the proposed financial services activities to be carried out by the bank and its affiliates; and
  - (ii) the nature and degree of supervision and regulation applying to the proposed financial services activities to be carried out by the affiliates of the bank; and
- (h) the best interests of the financial system in Canada.

---

<sup>3</sup> The statutory provision applies only to the incorporation of a bank.

## 2.0 Assessment Criteria

OSFI is responsible for assessing applications for incorporation and making a recommendation to the Minister, who may take into consideration all relevant matters. In some instances, applicants may want to consult with OSFI to review options for the type of institution to be incorporated (e.g., bank, trust company, loan company).

The assessment criteria follow.

### 2.1 Ownership

The ownership regime is based on the size of the FRFI. While the ownership provisions or restrictions may not apply at the time of incorporation, the applicant should be aware of the ownership criteria as the FRFI crosses each size threshold. The applicant should also refer to the statutory criteria, and to other factors set out in this Guide, that govern the establishment and ownership of a FRFI.

If a financial services group wishes to establish a FRFI, OSFI expects the group to select as the applicant the entity through which most of the group's banking business or financial activities is conducted. However, there may be valid reasons for choosing another applicant in the group.

The general criteria for determining the ownership regime of a FRFI and restrictions on ownership are summarized below:

#### *Small Bank*

- Shareholders' equity of less than \$1 billion.
- No restriction on ownership other than:
  - the requirement for Ministerial approval to own more than 10% and up to 100% of any class of shares;
  - if the bank is controlled by a large Canadian bank or by a Canadian bank holding company and the bank has equity in excess of \$250 million, no other person may be a major shareholder<sup>4</sup> of the bank.

---

<sup>4</sup> Major shareholder is generally defined as a person who beneficially owns more than 20% of any class of voting shares or 30% of any class of non-voting shares (refer to applicable Acts for definition).

***Medium Bank***

- Shareholders' equity of \$1 billion or more, but less than \$5 billion.
- No restriction on ownership other than:
  - the requirement for Ministerial approval to own more than 10% of any class of shares;
  - at least 35% of the voting shares must be listed on a recognized Canadian stock exchange and owned by persons who are not major shareholders<sup>5</sup>;
  - if the bank is controlled by a large Canadian bank or by a widely held Canadian bank holding company, no other person may be a major shareholder of the bank.

***Large Bank***

- Shareholders' equity of \$5 billion or more.
- Required to be widely held.
- Any person may own less than 10% of any class of shares without any approval.
- Any person may own more than 10% of any class of shares and up to 20% of any class of voting shares or up to 30% of any class of non-voting shares, with the approval of the Minister, provided the person does not control<sup>6</sup> the bank.
- Where a large bank is a subsidiary of a widely held bank holding company, the bank holding company may own 100% of the shares of the large bank.
- Certain eligible institutions (e.g., widely held insurance holding companies, widely held Canadian financial institutions, eligible foreign institutions), which control banks with shareholders' equity of less than \$5 billion, will be able to continue to closely hold those banks as the equity grows through the \$5 billion threshold.

<sup>5</sup> The applicant may apply, under certain circumstances, to be exempted from the public holding requirement.

<sup>6</sup> For definition of "control", refer to applicable Acts and *Guidelines Respecting Control in Fact for the Purpose of Subsection 377(1) of the Bank Act*.

***Trust or Loan Company***

- If shareholders' equity is less than \$1 billion, no restriction on ownership other than the requirement for Ministerial approval to own more than 10% and up to 100% of any class of shares.
- If shareholders' equity is \$1 billion or more, no restriction on ownership other than:
  - the requirement for Ministerial approval to own more than 10% of any class of shares;
  - at least 35% of the voting shares must be listed on a recognized Canadian stock exchange and owned by persons who are not major shareholders<sup>7</sup>.

## **2.2 Eligible Applicants**

The legislation provides that any entity or person is eligible to own a FRFI. However, applicants who do not meet the statutory criteria listed in section 1.0 and those who fall in the following category, are not eligible to apply for letters patent of incorporation:

- (a) Her Majesty in right of Canada or in right of a province, an agency of Her Majesty in either of those rights or an entity controlled by Her Majesty in either of those rights;
- (b) the government of a foreign country or any political subdivision thereof;
- (c) an agency of the government of a foreign country or any political subdivision thereof; or
- (d) an entity that is controlled by the government of a foreign country or any political subdivision thereof, other than an entity that is a foreign bank, a foreign institution or a subsidiary of a foreign bank or foreign institution.

## **2.3 Supervision and Regulation of Banks**

The Basel Committee on Banking Supervision promotes the concept of consolidated supervision for banking organizations as a regulatory means to monitor potential contagion risks within the group. As Canada is a signatory to the Basel Accord, the Superintendent is required to ensure that there is comprehensive supervision of the material financial services of the group. OSFI may also impose additional requirements or restrictions on the activities of the bank.

---

<sup>7</sup> The applicant may apply, under certain circumstances, to be exempted from the public holding requirement.

There are various ways that supervisory concerns arising out of corporate structures could be addressed. One possibility would be for applicants to undertake to restructure and consolidate (existing and/or planned) financial services activities in or under the bank or under a Canadian regulated holding company. Another possibility, under certain appropriate circumstances, would be for applicants to meet the objectives through undertakings and/or other restrictions on the activities and/or operations of the bank. For example, OSFI could impose an additional capital requirement or could place restrictions on the bank's [Assets to Capital Multiple](#).

In order for the Superintendent to be able to assess OSFI's ability to supervise, examine, and regulate the bank effectively, OSFI will need to examine the proposed corporate structure and corporate affiliations. Therefore, applicants for bank incorporations will need to provide information on the nature and extent of the current and proposed financial services activities of the major shareholders and their affiliates (other than the proposed bank), and on the nature and degree of supervision applicable to these financial services activities.

The specific factors that the Superintendent will consider in assessing the level of risk posed by the corporate structure and its impact on OSFI's ability to supervise (referred to as "supervisability") are outlined below.

#### **2.4 Factors for Assessing Supervisability of a Bank**

In assessing the extent to which the proposed corporate structure of an applicant may affect the supervision and regulation of the bank, – i.e., supervisability – the Superintendent will consider, among others, these factors:

- (a) Activities of the Bank
  - The financial services activities of the bank.
  - The plans to take retail deposits in the bank in Canada.
- (b) Systemic Importance of the Bank
  - The absolute size or intended role of the bank, relative to the Canadian banking sector.
- (c) Predominant Nature of the Group's Financial Activities
  - The extent of the applicant's financial services activities, having regard to the:
    - (i) complexity of the corporate structure of the group;
    - (ii) strategic direction of the group or the nature of the planned financial services of the group;
    - (iii) potential for prudential concerns such as contagion, connected lending among members of the group, etc.;

- (iv) size of the bank relative to the group;
  - (v) existence and extent of financial services activities within the group that are in regionally separate locations; and
  - (vi) branding to be used by the bank and the extent that it is different and distinct from the branding used for the other activities of the group.
- (d) Independence of the Bank
- The extent to which the bank is an independent and self-sustaining operation with the authority to make decisions independent of the group. In making this determination, the Superintendent will consider:
    - (i) the extent to which directors on the board of the bank are independent from the boards of the other entities in the group; and
    - (ii) the extent to which the management of the bank is unique to the bank.
- (e) Regulatory Oversight of the Group
- The existence of Basel Accord signatories in the upstream controlling structure of the group.
  - The existence and extent to which affiliates within the corporate group are supervised by OSFI, other Basel Accord signatories, or other regulatory agencies with whom OSFI has concluded a Memorandum of Understanding pertaining to regulatory co-operation and to supervision of these affiliates.

## **2.5 Supervision and Regulation of Trust and Loan Companies**

As for all applications to create a FRFI, the Superintendent will assess OSFI's ability to supervise, examine, and regulate the trust or loan company effectively. If OSFI identifies supervisory concerns, the applicant may be required to restructure or provide undertakings intended to provide OSFI with information and/or to limit the applicant's activities. OSFI may also impose additional requirements or restrictions on the activities of the trust or loan company.

## **3.0 Information Requirements**

The following information should be submitted in support of an application. The level of detail of information to be provided will depend on the size of the FRFI, its corporate group, the ownership structure of the applicant and the nature and complexity and related inherent risks of its business. This information will assist OSFI in assessing the principal shareholders' commitment to the FRFI and in ensuring that the new FRFI has, and will continue to have, sufficient capital, and that it has adequate risk management controls in place to support its operations from the outset, thereby reducing the likelihood of failure. In addition, it will enable OSFI to form an opinion on the FRFI's ability to manage and control its activities. Therefore, the information submitted should clearly demonstrate that the applicant meets the criteria listed in this Guide.

Key information required when filing a draft application includes:

**3.1 Ownership and Financial Strength**

- (a) name of applicant;
- (b) name of jurisdiction and date of incorporation or establishment of the applicant;
- (c) address of principal place of business and head office of the applicant;
- (d) copy of constating documents and amendments, and company by-laws of the applicant, certified by legal counsel (include name and address of the legal counsel);
- (e) current organization chart (with percentages owned) for the applicant and its ultimate parent, if any, and all entities in the corporate group;
- (f) entities in which the applicant beneficially owns 10% or more of the voting rights (indicate by an asterisk whether any of the entities shown on the charts operate in Canada, and provide a summary of these operations);
- (g) details of any information on any voting agreement or other arrangements that involve persons exercising direct or indirect control over the applicant or its ultimate parent;
- (h) names of all persons owning more than 10% of any class of shares or ownership interests in the applicant and the percentage of shares or ownership interests held, as well as, date of birth, address, occupation, and citizenship of each person;
- (i) details of any shares or ownership interests of the applicant held by a government or a political subdivision, an agent or agency thereof, together with a summary of their involvement in the operation and affairs of the applicant;
- (j) summary of the financial and other activities carried on by the applicant and its affiliates, including a list of jurisdictions in which they operate;
- (k) if the applicant is a foreign-owned financial institution, provide information on the type and scope of supervision that applies in its home jurisdiction and whether it is subject to comprehensive consolidated supervision and regulation. The applicant should confirm that the regulatory authority where the applicant principally carries on its financial business is aware of its intention to own a FRFI, and whether the applicant needs regulatory approval from the home regulator to establish a FRFI. The name of the regulatory contact and, if applicable, the process and timing of the regulatory approval in the home jurisdiction should also be included;

- (l) copy of the audited consolidated financial statements of the applicant and of the ultimate parent, if applicable, for the last three years (balance sheet, income statement, statement of changes in shareholders' equity) and a copy of the latest annual report. If the applicant is a foreign financial institution, provide a comparison between the accounting standards used to complete the applicant's financial statements and the Canadian Generally Accepted Accounting Principles;
- (m) details of whether the applicant has been the subject of any criminal convictions or breaches of statutory or other administrative or regulatory enactments; and
- (n) evidence that the nature and sufficiency of the applicant's financial resources are such that it would be capable of providing continuing support to the FRFI or would have access to financial resources to enable it to do so. If the applicant is a bank, it must demonstrate that it is adequately capitalized and meets, as a minimum, the Bank for International Settlements (BIS) standards, as applied in both its home jurisdiction and in Canada.

In cases where a FRFI will be directly or indirectly held by one or a few individuals, OSFI will require additional personal information including, as a minimum, each individual's place and date of birth, current address, curriculum vitae, and a completed [OSFI Security Information Form](#) so that law enforcement and intelligence agencies, such as the Royal Canadian Mounted Police and the Canadian Security Intelligence Service, can conduct security assessments. OSFI will also require personal financial information from each of those individuals that demonstrates clearly that they have, or have access to, the necessary financial resources to provide ongoing financial support to the FRFI. Each individual should also provide details of any material regulatory actions, criminal convictions or breaches of statutory or other administrative/regulatory enactments against the individual.

### **3.2 Business Plan**

A three-year business plan, including:

- (a) the reasons why the applicant wants to establish a FRFI;
- (b) an analysis of target markets and opportunities that the FRFI will pursue in Canada, and the plans to address them;
- (c) an analysis of competitors, showing both threats and opportunities, and plans to address them;
- (d) the reasons why the applicant believes that the FRFI will be successful and the overall strategy for achieving this success, including key assumptions;

- (e) an overview of each line of business to be conducted by the FRFI and the products and services to be offered as well as a summary of the FRFI's businesses as a whole and how they interrelate;
- (f) pro-forma financial statements (base case), including balance sheet and income statement for the first three years of operations. Identify and discuss key assumptions used. Major asset, liability, income and expense categories should be identified;
- (g) contingency plans resulting from variations associated with key assumptions used in developing the base case business plan. Provide sensitivity analysis showing the results of changes in key assumptions on the base case business plan under a worst case scenario and discuss the changes in assumptions;
- (h) for each of the three years, a breakdown of all elements used to calculate the risk-based tier 1 and total capital ratios, and the assets to capital multiple, including a description of any off-balance sheet activities. The capital must meet OSFI's [Guideline A, Capital Adequacy Requirements](#), but at no time should it be less than \$5 million or any greater amount that may be specified by the Minister.

In preparing the pro-forma financial statements, applicants should normally assume an initial assets to capital multiple of 12.5 times for the FRFI in the first three years of operations. However, the strength of the business plan, the financial strength of the owner and the level of initial capitalization could be important considerations in OSFI granting a higher assets to capital multiple;

- (i) source of initial and future capital provided for in the base case and the worst case scenarios, in the form of a capital plan and funding policies;
- (j) projected staff complement and an organization chart showing reporting lines for senior positions and key responsibilities in the FRFI over the three-year period, and a description of the functions the individuals will perform;
- (k) where an internet platform (e-commerce) would form the key delivery structure of the FRFI, the risks that this technology would pose, for both the FRFI and its clients, must be identified and addressed to the satisfaction of OSFI. The business plan must address:
  - how customers, employees and vendors will be authenticated and authorised to prevent repudiation and fraud;
  - the physical and logical network security, including security of the web site;
  - security of customer information;
  - management of systems capacity and denial of service attacks;
  - encryption of communications;
  - provision for electronic data processing audits; and

- continuing and contingency costs related to the development and maintenance of information management and information technology plans;
- (l) description of any material outsourcing arrangements between the FRFI and its affiliates or third parties, that may be anticipated, including any data processing functions that may be conducted outside of Canada which will require a specific approval. Generally, OSFI would expect new FRFIs to comply with the revised [Guideline B-10 on Outsourcing of Business Activities, Functions and Processes](#);
- (m) the intended financial year-end for the FRFI; and
- (n) a copy of any shareholders' agreement.

### 3.3 Management

- (a) Information on each senior officer of the FRFI who will be responsible for oversight of the operations. The information should include:
  - full name and address;
  - title;
  - birthplace and date of birth;
  - citizenship;
  - description of the principal business of the individual (if not a full-time employee of the FRFI);
  - details of any material regulatory actions, criminal convictions or breaches of statutory or other administrative/regulatory enactments against the individual or any entity, for which he/she was, or is, a senior officer;
  - current curriculum vitae demonstrating that the individual has the qualifications and expertise to manage or direct the FRFI's proposed business; and
  - a completed [OSFI Security Information Form](#) so that law enforcement and intelligence agencies may conduct security assessments.
- (b) The name and address of the external audit firm and the partner who will be responsible for auditing the FRFI.

### 3.4 Policies, Procedures and Controls

As outlined in the document entitled [Supervisory Framework](#)<sup>8</sup>, OSFI applies a risk-based approach to assessing a FRFI's safety and soundness on a consolidated basis. OSFI will focus on areas of higher risk. For each activity that OSFI identifies as significant, OSFI assesses the level of risk, and considers the impact of risk mitigation by evaluating the

---

<sup>8</sup> For more information on OSFI's Assessment Criteria, see:  
[http://www.osfi-bsif.gc.ca/app/DocRepository/1/eng/practices/supervisory/02-Introduction\\_to\\_Criteria\\_e.pdf](http://www.osfi-bsif.gc.ca/app/DocRepository/1/eng/practices/supervisory/02-Introduction_to_Criteria_e.pdf)

quality of risk management. Institutions that are well managed relative to their risks will require less supervision.

As part of the incorporation process, applicants must provide a description of the major risk management and control processes and policies for the new FRFI. A review of these processes will enable OSFI to assess the FRFI's ability to manage and mitigate the risks inherent in its business activities and comply with the governing statutes, regulations and OSFI guidelines. The scope of this work will depend on the size and the risk profile of the institution.

In this regard, the applicant should:

- (a) provide an overview of the investment and lending policies, standards and procedures in respect of the FRFI's portfolio of investments and loans (refer to OSFI's [Guideline B-1, Prudent Person Approach](#) and [Guideline B-2, Large Exposure Limits](#));
- (b) provide draft policies and procedures respecting the FRFI's funding and liquidity risk management and describe control procedures to monitor funding and liquidity. Please refer to OSFI's [Guideline B-6, Liquidity](#);
- (c) provide detailed provisioning policies and a description of the general allowances that are anticipated in executing the FRFI's business plan;
- (d) provide the capital management policy which should outline the targeted levels of capital and should describe on-going monitoring procedures to ensure that the FRFI will meet OSFI's minimum capital requirements;
- (e) identify the FRFI's other major risk areas and the policies and control procedures to monitor risk tolerance and risk management. Among the major risks are market, credit, operational, technology, legal, regulatory, reputational, and strategic risks; and
- (f) provide details of any risk management and control processes that will be integrated with those of the operations of other entities in the applicant's group.

### **3.5 Board of Directors and Committees**

- (a) For each director, provide the information listed in subsection 3.3(a) of the Guide.
- (b) Describe the composition of the Board and its committees, the Board's role, responsibilities, policies and practices, the mandate of the Board committees, and the self-assessment programs the Board intends to put in place. In addition, describe the Board's responsibilities with respect to risk management and internal controls. Particular attention should be given to the audit and conduct review

committees. Please note that OSFI will assess the strength of the Board at the time of incorporation and the Board's effectiveness going forward.

- (c) Describe the FRFI's conflict of interest policy and, if applicable, the oversight that will be provided by the parent's management committees.

The corporate governance practices adopted by a FRFI will likely depend on the nature, scope, complexity, and risk profile of that institution. Please refer to [OSFI's Corporate Governance Guideline](#).

### 3.6 Internal Audit

Describe the roles and responsibilities, organization structure, and methodology and practices of the internal audit function, to assist OSFI in its assessment of the independent oversight of the organizational and procedural controls. Where applicable, involvement of any internal audit groups from the parent company to assess internal controls of the FRFI should also be documented.

### 3.7 Compliance Management

- (a) Describe the system of internal controls and policies the FRFI will follow to ensure compliance with its governing legislation, and regulations and the guidelines issued by OSFI. Include the name of the senior officer responsible for compliance and describe the resources and authority allocated to discharge this responsibility. Refer to OSFI's [Guideline E-13: Legislative Compliance Management](#).
- (b) Describe the system of internal controls and the policies the FRFI will follow to ensure compliance with sections 83.08 to 83.12 of the *Criminal Code* and the *United Nations Suppression of Terrorism Regulations* ("UNSTR") and related directives issued by OSFI and the Government of Canada. Include the name of the senior officer responsible for compliance with the UNSTR, and describe the resources and authority allocated to discharge this responsibility.
- (c) Describe the system of internal controls and the policies the FRFI will follow to ensure compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the "Act"), and related guidelines issued by [The Financial Transactions and Reports Analysis Centre of Canada](#) (FINTRAC) and [OSFI's Guideline B-8, Deterring and Detecting Money Laundering](#). Include the name of the Chief Anti-Money Laundering Officer of the FRFI appointed under that Act, and describe the resources and authority allocated to discharge this responsibility.

### **3.8 Information Technology Governance Structure**

Describe, in overview form, the FRFI's information technology governance structure, including separation of functions, reporting lines and a breakdown of the full-time equivalents within each functional area.

### **3.9 Systems and Business Continuity**

Describe, in overview form, the FRFI's computer systems, including the technology platforms used, the type of hardware, the type of application software, and a risk assessment of information technology operations. Include any plans for e-commerce, addressing the related risk controls to be used. A business resumption plan for data recovery should be included.

A business continuity plan should be included. The business continuity plan and related back-up systems should be commensurate with the risk of a service disruption. In particular, the FRFI's business continuity plan should ensure that the FRFI has in its possession or can readily access all records necessary to allow it to sustain business operations, meet its regulatory obligations, and provide all information as may be required by OSFI to meet its legislated mandate.

All FRFIs are required to complete and file with OSFI the [OSFI-57 Return of Corporate Information](#).

### **3.10 Other Requirements**

In addition, the following are required:

- (a) the by-laws, including capital by-laws;
- (b) the proposed name<sup>9</sup> of the FRFI, with corresponding name in French, if so desired, and a standard name-search report. This will assist OSFI in determining the availability and suitability of the proposed name;
- (c) a Support Principle acknowledgement letter, usually from the ultimate controlling shareholder(s), with respect to supporting the operations and capital needs of the FRFI. This acknowledgement will be effected by the provision of a letter duly signed by a senior officer if the applicant is a corporation or by an individual if the applicant is an individual or a number of individuals. The acknowledgement letter to be signed will be provided by the Legislation and Approvals Division officer responsible for reviewing the application. When no person or entity will control the FRFI, the applicant will not be required to provide this letter;

---

<sup>9</sup> The proposed name can be reserved under the relevant Acts.

- (d) details of whether any regulatory authority has refused an application for incorporation of a financial institution by the applicant; and
- (e) [Service Charges \(Office of the Superintendent of Financial Institutions\) Regulations](#) require that a non-refundable fee be filed in respect of the processing of an application. A cheque or draft should be made payable to the Receiver General for Canada.

#### **4.0 OSFI Review Process**

OSFI will review the draft application and may contact the applicant to discuss its completeness, status, and outstanding issues. Where necessary, OSFI may request additional information to complete the application assessment. A draft application will not be considered complete by OSFI until all requested information is received, it is in a form satisfactory to OSFI and it is accompanied by the applicable fee. Additional fees may apply if the FRFI is applying for other regulatory approvals.

#### **5.0 Formal Application**

The formal application process is discussed below.

##### **5.1 Statutory Publication**

Before making a formal application, the applicant must give notice of the intention to apply for letters patent of incorporation. The statutes outline the timing and means by which notice is to be made. The notice of intent allows for public comment and is to be placed in the *Canada Gazette* and in a newspaper in general circulation at or near the place where the head office of the FRFI is to be situated. The form of notice must be satisfactory to OSFI and must contain the name under which the FRFI intends to carry on business in Canada. Draft notices should be provided to OSFI for review prior to publication.

The statutes provide that a person or persons may formally object to the proposed incorporation of a FRFI by submitting the objection, in writing, to the Superintendent within 30 days of the last publication. The Superintendent will advise the Minister of any objection and whether a public enquiry into the objection is warranted.

##### **5.2 Submission of Formal Application**

After OSFI has determined that the draft application is complete and the statutory publication is finished, the applicant should submit a formal application to the Minister, through OSFI. This application should include:

- (a) a formal letter of application;

- (b) a statutory declaration by a representative of the newspaper and *Canada Gazette* pertaining to the dates that the applicant's notice of intention was published, and a copy of the published notice;
- (c) a certified copy of resolution of the Board of Directors of the applicant, approving the application;
- (d) the signed Support Principle acknowledgement letter; and
- (e) if applicable, evidence that the regulator in the home jurisdiction reports favourably on an applicant. OSFI requires that a statement be filed by an appropriate public official stating that the home jurisdiction is aware of the applicant's intention to incorporate a subsidiary in Canada and that the applicant is in good standing. If an application is made by a foreign bank/institution from a country that is not a member of the World Trade Organization, evidence that treatment as favourable exists or will be provided to Canadians in the jurisdiction in which the applicant principally carries on business, either directly or through a subsidiary.

### **5.3 Letters Patent**

The FRFI comes into existence on the date provided in the letters patent of incorporation. The Minister may set out in the letters patent restrictions on the FRFI's business to address supervisory and regulatory concerns raised by the corporate structure of the applicant.

On receipt of the letters patent, a FRFI is incorporated, although it may not carry on any business until the Superintendent has issued an Order to Commence and Carry on Business.

## **PART II**

### **6.0 Requirements for the Making of an Order to Commence and Carry on Business by the Superintendent**

Section 48 of the *Bank Act* and Section 52 of the *Trust and Loan Companies Act* provide that no business can be carried on unless the Superintendent has, by order, approved the commencement and carrying on of business.

#### **6.1 Requirements**

The FRFI's application for an Order to Commence and Carry on Business should be supported by:

- (a) a certified copy of the minutes of the first directors meeting;

- (b) a confirmation, on behalf of the FRFI, of deposit of at least \$5 million of paid-in capital, or such greater amount as may be specified;
- (c) a certified copy of the minutes of the first meeting of the shareholders of the FRFI;
- (d) a breakdown of the amounts paid or to be paid by the FRFI in connection with its incorporation and organization, and a statement that the amounts are reasonable; and
- (e) if the FRFI intends to take retail deposits, evidence that the applicant has applied to, or is a member institution of, the Canada Deposit Insurance Corporation.

Before issuing an Order to Commence and Carry on Business, OSFI must be satisfied that the FRFI has the necessary systems, management structure, control processes and compliance management systems in place. An on-site review is usually arranged at this stage. The purpose of the review is to assess the control processes and management systems referred to in section 3.4 of this Guide and to ensure that the FRFI is capable of producing the required statutory and supervisory information in an accurate and timely fashion as soon as it starts operations.

## **6.2 Order to Commence and Carry on Business**

- (a) The Superintendent may not make an Order more than one year after the day on which the FRFI came into existence. Therefore, the FRFI should ensure that information required for the issuance of an Order is submitted to the Superintendent as soon as possible after it receives its letters patent of incorporation.
- (b) Once an Order to Commence and Carry on Business has been made by the Superintendent, it remains in force, subject to any conditions or limitations set out in the Order, unless changed by further Order of the Superintendent. At the time that the FRFI receives its Order, it will also be advised of its authorized assets to capital multiple.
- (c) The FRFI will be required to publish notice of the making of the Order in a newspaper in general circulation in the city where the head office is located.
- (d) In addition to obtaining an Order by the Superintendent, trust and loan companies must be licensed to operate in each of the provinces and/or territories in which they wish to transact business.

## 7.0 Timing

While there is no specific time limit on assessing applications, OSFI will undertake to complete the assessment as quickly as possible. Each application will depend on its own specifics, but applicants should be aware that the initial assessment takes an average of 3 months and that additional time must be factored in (approximately 3 months) for the required statutory publication. OSFI will communicate regularly with the applicant throughout this process. It is important to note that delays in regulatory approval often result from incomplete information being filed.

A new FRFI may require several months to prepare for the on-site review prior to receiving its Order to Commence and Carry on Business. To a large extent, the timing of receipt of an Order will depend on the readiness of the FRFI.

### For Additional Information

All enquiries regarding incorporating a FRFI should be directed to:

Office of the Superintendent of Financial Institutions  
Legislation and Approvals Division  
13<sup>th</sup> Floor  
255 Albert Street  
Ottawa, ON K1A 0H2  
CANADA

Telephone: (613) 990-3590  
Facsimile: (613) 991-0325  
(613) 991-2980

Web site: <http://www.osfi-bsif.gc.ca/>